

VERMONT ENVIRONMENTAL BOARD  
10 V.S.A. §§ 6001-6092

RE: Ralph Paradis and John Masters

Application #2W1031-EB

PROPOSAL FOR DISMISSAL

This proposed order of dismissal pertains to the timeliness of a motion to alter and an appeal tiled by the Town of Dover Selectmen ("Town"). Dover Planning Commission ("Planning Commission"), and Dover Development Review Board (collectively "Appellants"). The Appellants seek Board review of a Memorandum of Decision issued on April 3, 1998, by the District #2 Environmental Commission ("District Commission") dismissing the Appellants' Motion to Alter on the basis that it was untimely filed. As explained below, I propose to dismiss the appeal to the Board because I concur with the Commission that the Motion to Alter was untimely as a matter of law and the Board has no discretion to waive the deadlines for tiling.

I. BACKGROUND

On December 31, 1997, the District Commission issued Findings of Fact and Conclusions of Law with respect to Application #2W1031 ("Application Decision"). The District Commission denied a land use permit to Ralph Paradis and John Masters ("Applicants") for a four-lot subdivision ("Project") in the Town of Dover on the basis that the Applicants had failed to demonstrate that the Project would comply with Act 250 criteria 8 (aesthetics) and 10 (local and regional plans). The Project is subject to Act 250 jurisdiction because it involves construction of a road more than 800 feet in length and construction of improvements over 2500 feet in elevation. 10 V.S.A. §6001(3); EBR 2(A)(1), 2(A)(6). Both the Town and the Planning Commission were parties to this proceeding.

On February 2, 1998, the Appellants tiled a Motion to Alter with respect to several findings of fact interpreting several sections of the Dover Town Plan ("Town Plan"). This motion was purportedly mailed on January 30, 1998.

On April 3, 1998, the District Commission issued a Memorandum of Decision dismissing the Motion to Alter on the basis that it was untimely filed.

On April 8, 1998, the Appellants appealed the District Commission's decision to the Board, asking the Board to direct the District Commission to review their Motion to Alter. On April 8, 1998, the Board's General Counsel, David L. Grayck, wrote to the Appellants advising them that their appeal was not ministerial complete. On April 13, 1998, the Appellants supplemented their appeal.

The Appellants have provided no legal authority supporting the extension of the 30-day deadline for filing a motion to alter nor have they demonstrated that the Application Decision was not issued on December 31, 1998, or that the District Commission failed to provide the Appellants with notice of this decision. Indeed, the Appellants concede that they timely received the Application Decision and filed their motion outside the time frame provided by EBR 31(A)(1), but they argue that in the interest of "fairness" they should have been allowed a filing extension due to the fact that they mailed their Motion to Alter within the 30-day period and two holidays within the month of January reduced the number of business days in which to review and respond to the merits of the Application Decision.

## II. ISSUES

1. Whether the Motion to Alter was timely filed.
3. Whether this appeal should be dismissed.

## III. PROPOSED DECISION

Environmental Board Rule ("EBR") 16(B) provides that the Chair of the Board may make preliminary rulings without convening a prehearing conference. If any party objects to the ruling, the ruling will be reviewed and the matter resolved by the Board.

In accordance with EBR 16(B), I propose to dismiss this appeal for two related reasons See also EBR 18(D) (Dismissal).

First, I conclude that the Motion to Alter was untimely filed. EBR 31(A)(1) provides that a party may file a motion to alter with respect to a decision of the District Commission within 30 days of the date of that decision. Pursuant to EBR 12(A), a document is deemed "filed" with the District Commission on the date it is received at the Commission's office. It is irrelevant that the Motion to Alter was *mailed* within the 30-day period. Since January 30, 1998, was the 30th day from the date of decision and it was not a Saturday, Sunday or State legal holiday, the Appellants were required to file the Motion to Alter by January 30, 1998, at the District Commission's office. See EBR 6: Re: Stanmar, Inc., #5L0558-1-EB, Findings of Fact, Conclusions of Law, and Order at 4 (Dec. 12, 1979).

As stated above, the Appellants did not file the Motion to Alter until February 2, 1998. This was not within 30 days from the date of decision provided by EBR 12(A). Neither statute

nor Board rule provides for extension of this 30-day period. Therefore, I conclude that the Commission had no authority to accept and act upon the Motion to Alter, other than to issue a dismissal order. See Re: Ralph Paradis and John Masters, #2W1031, Memorandum of Decision (April 3, 1998).

Second, I conclude that the Board has no jurisdiction to consider the merits of the Application Decision nor to direct the District Commission to re-open its proceeding to do the same. This is because the Application Decision became final and binding after January 30, 1998, subject, of course, to the right of the Applicants to seek reconsideration and review of a revised application within six months of the date of the District Commission's decision pursuant to EBR 31 (B).

Had the Appellants timely filed their Motion to Alter, the time frame for appeals to the Board would have been extended by operation of law. Specifically, EBR 31 (A) (3) provides that "the full time for appeal shall commence to run and is to be computed from issuance of a decision on said motion." However, because the Motion to Alter was untimely filed, the time for filing an appeal to the Board was not tolled or extended.

Title 10 V.S.A. § 6089(a)(4) specifically states that an appeal from a district commission decision must be filed with the Board within 30 days of the decision. Pursuant to EBR 12(A), a document is deemed "filed" with the Board on the date it is received at the Board's office. Accordingly, the statutory deadline for the Appellants' notice of appeal was January 30, 1998. Any substantive or procedural challenges to the Application Decision had to be filed on or before that deadline in order to invoke the Board's jurisdiction. Because no appeal was timely filed, the Application Decision, whether or not properly decided, is final and not subject to attack. In re: Taft Comers Assocs., 160 Vt. 583, 593 (1993).

As a result of the Appellants' failure to file a timely Motion to Alter or a timely appeal of the Application Decision, I conclude that the Board is now precluded from considering the merits of the appeal and, in the alternative, from directing the District Commission to re-open its proceeding to hear the Appellants' substantive arguments with respect to Criterion 10.

The Board has routinely dismissed appeals of permit decisions where such appeals were filed after the 30-day statutory deadline for filing appeals. See, e.g., Re: Havstack Group, #700002-10-EB, Memorandum of Decision (Mar. 29, 1989); Re: Club 107, #3W0196-3-EB, Memorandum of Decision (Feb. 2, 1987); Re: Puppy Acres Boarding Kennel, #2W0568-2-EB, Memorandum of Decision (Oct. 11, 1985), aff'd, In re: Puppy Acres Boarding Kennel, No. 85-490 (VT. 1986). I conclude that there is no substantive difference between these decisions and the present matter, even though the present appeal arises from a challenge to the District

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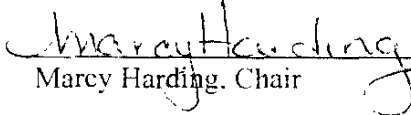
Commission's ruling on an untimely Motion to Alter. While I recognize that the Appellants may have missed the filing deadline for the Motion to Alter by one day and while they may have legitimate issues to raise respecting the interpretation of the Dover Town Plan, the Board has no discretion to waive jurisdictional deadlines. In re Town of Putney Interim Solid Waste Certification, No. 93-185. slip. op. (Vt. Sept. 22, 1993) (unpublished).

#### IV. ORDER

1. The Appellants' Motion to Alter was untimely filed. The Appellants' request that the Board direct the District #2 Environmental Commission to review their Motion to Alter is denied.
2. This appeal is hereby dismissed.
3. Any party that objects to the Chair's ruling and would like a review by the full Board shall file such objection in writing and any request for oral argument on or before **4:30 p.m., Tuesday, May 5, 1998**. If such a written objection is timely filed, it will be reviewed by the Board at its meeting on May 26, 1998. If oral argument is timely requested, it will be held on May 26, 1998, at a time and place to be announced by subsequent notice. If no objection is timely filed, this order shall become final and binding.

Dated at Montpelier, Vermont, this 24<sup>th</sup> day of April, 1998

ENVIRONMENTAL BOARD

  
Marcy Harding, Chair